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FILED

JAN 12 2007

January 11, 2007

via DHL Express

**SURFACE
TRANSPORTATION BOARD**

FEE RECEIVED

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20006

218438

JAN 12 2007

**SURFACE
TRANSPORTATION BOARD**

Re: STB Docket No. AB-290 (Sub-No. 283X), Norfolk Southern Railway
Company - Abandonment - Petition for Exemption - at Harriman,
in Orange County, New York

Dear Mr. Williams:

Enclosed for filing with the Board in the subject docket is an original and ten copies of Norfolk Southern Railway Company's (NSR) Petition for Exemption to abandon a railroad line in the subject proceeding. Also, enclosed is a check for the filing fee and three diskettes in a format that is compatible with the Board's word processing programs.

Please acknowledge receipt of this filing on the enclosed copy of this letter and return it to me in the self-addressed, stamped envelope.

Yours very truly,

James R. Paschall

ENTERED
Office of Proceedings

Enclosures

JAN 12 2007

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO. AB-290 (SUB-NO. 283X)
NORFOLK SOUTHERN RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
IN HARRIMAN, ORANGE COUNTY, NEW YORK
PETITION FOR EXEMPTION

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Attorney for
Norfolk Southern Railway Company

Dated: January 11, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-290 (Sub-No. 283X)

Norfolk Southern Railway Company

- Abandonment Exemption -

At Harriman, In Orange County, New York

Petition for Exemption

Norfolk Southern Railway Company ("NSR") hereby petitions the Surface Transportation Board (the "Board" or "STB"), pursuant to the provisions of 49 U.S.C. 10502, as amended, for exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon 1.64 miles of railroad line between Mileposts ZU 45.00 and ZU 46.64 at Harriman, NY in Orange County, NY (the "Line"). The Line connects with NSR's Southern Tier main line at Milepost ZU 45.00.¹ Because NSR intends to reclassify and

¹Metro-North Commuter Railroad Company leases 66.5 miles of the Southern Tier main line, over which NSR continues to conduct freight operations pursuant to an operating agreement, (1) between approximately milepost JS-31.3 at Suffern, NY, and approximately milepost JS-76.6 at CP-Howells, NY and (2) between approximately milepost SR-68.7 (equals JS-76.6) at CP-Howells, NY and approximately milepost SR-89.9 at Port Jervis, NY, in Orange and Rockland Counties, NY. See *Metro-North Commuter Railroad Company – Acquisition and Operation Exemption – Line of Norfolk Southern Railway Company and Pennsylvania Lines LLC*, STB Finance Docket No.

retain the segment of the Line between milepost ZU 45.00 and milepost ZU 45.90 as industrial or storage track, upon consummation of the abandonment of the Line, NSR also requests an exemption from the Offer of Financial Assistance and Public Use Condition provisions of 49 U.S.C. 10904 and 49 U.S.C. 10905.

Section 10502 of Title 49, as amended, directs the Board to exempt a transaction when the Board finds that the transaction satisfies certain statutory criteria. This petition demonstrates that the abandonment for which NSR seeks exemption satisfies the statutory criteria.

Background

The Line is a former Consolidated Rail Corporation line, which was at one time an Erie Railroad Company main line. However, the Line has been a 1.64-mile dead-end spur for over 20 years. The only shipper on the Line, Nepera Chemical Company, which was served over the segment of the Line between Mileposts ZU 45.00 and ZU 45.90, permanently ceased operations in October 2005. No traffic has moved over the Line since that date. The segment of the Line over which Nepera Chemical Company was served is the closest portion of the Line to the connection with NSR's Southern Tier Main Line. NSR desires to abandon the Line and retain and reclassify the segment of the Line between Mileposts ZU 45.00 and ZU 45.90 as industrial or other house track for ancillary rail uses and because the plant site may become available for industrial development which could result in a new railroad customer locating at the site.

Consolidated Rail Corporation (Conrail) took the remaining segment of the Line between mileposts ZU 45.90 and ZU 46.64) out of service several years prior to NSR's acquisition of the Line from Conrail on June 1, 1999. Conrail previously removed the track materials from this segment of the Line. While our records show that Conrail scheduled this segment of the Line for abandonment, NSR cannot document Conrail's receipt of or exercise of abandonment authority or exemption from the ICC or STB for this 0.74-mile segment. Therefore, NSR includes this long dormant 0.74-mile segment of the Line in this petition for exemption to abandon the 0.9-mile segment of the Line upon which traffic moved until October 2005. In view of Conrail's previous salvage actions, no further salvage or other disturbance of the right-of-way will be required upon abandonment of this segment of the Line.

Further Information

Further information supporting an exemption for the proposed abandonment is as follows:

(1) Exact name of petitioner. The petitioner is Norfolk Southern Railway Company (NSR). NSR operates a railroad system in 20 States throughout the Eastern United States, including New York, and in Ontario, Canada. NSR is a wholly-owned subsidiary of Norfolk Southern Corporation, a non-carrier.

(2) Petitioner is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

(3) Pursuant to 49 U.S.C. 10502, the relief sought by petitioner is an

exemption from the prior approval requirements of 49 U.S.C. 10903 so that NSR may abandon the Line without being required to list the Line on its system diagram map or to submit a full long-form abandonment application. Because NSR intends to retain and reclassify the segment of the Line between Mileposts ZU 45.0 and ZU 45.9 as industrial or house track, NSR also requests exemptions from the Offer of Financial Assistance and Public Use Condition provisions of 49 U.S.C. 10904 and 49 U.S.C. 10905.

(4) A map of the Harriman, NY Line proposed to be abandoned is attached as Exhibit 1.

(5) System Diagram Map. This Line has not been included as a rail line to be abandoned or over which service is to be discontinued on the carrier's system diagram map because it was not expected to be the subject of an abandonment application.

(6) This petition is being filed because the only railroad customer on the Line, Nepera Chemical Company, permanently ceased its operations in October 2005. There has been no demand for rail service over the Line since that time. The Line is a 1.64-mile dead-end spur with no overhead traffic. Conrail previously removed the track and material from the segment of the Line between Milepost ZU 45.90 and Milepost ZU 46.64 but NSR can not verify that Conrail actually received or exercised abandonment authority or exemption from the ICC or STB with respect to that segment. The inclusion of that segment of the Line as part of this abandonment will clarify the status of that segment of the Line.

NSR can save maintenance costs on the more recently active portion of the Line and can later dispose of the property promptly if industrial development does not take

place along the Line by formally abandoning the Line now. However, NSR intends to retain and reclassify the segment of the Line between Milepost ZU 45.0 and ZU 45.9, which is closest to its Southern Tier main line, as industrial lead or house track, so that the track may be used for ancillary rail purposes and kept available in the event a potential railroad customer acquires the plant site adjacent to that segment of the Line in the future.

(7) Counsel for Petitioner to whom correspondence may be sent is:

James R. Paschall
Senior General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

Counsel's Phone Number is: (757) 629-2759

(8) The Line proposed for abandonment traverses United States Postal Service Zip Code 10926 and includes the former station of Harriman, NY.

Reasons for Abandonment

Formal abandonment of the subject Line will allow NSR to retain the portion of the line segment between mileposts ZU 45.00 and ZU 45.90 for house track use and to serve potential future customers because the location appears to still present future industrial development opportunities. In addition, formal abandonment will possibly allow Orange County to lease or to acquire all or a portion of the segment of the Line between mileposts ZU 45.90 and ZU 46.64 for possible interim trail use.

Efforts to Continue Service

The abandonment of the subject Line will not result in the loss of rail service to any shippers. The sole shipper on the line segment between mileposts ZU 45.00 and ZU 45.90, Nepera Chemical Company, permanently closed its plant in October, 2005. There are no other potential railroad customers located along this short line of railroad.

Communities on Line

The only community on the Line is Harriman, NY (population 2,252 according to 2000 census).

Public Use, Trail Use, Offers of Financial Assistance

Since the line segment between milepost ZU 45.00 and milepost ZU 45.90 will be reclassified as an industrial track and retained for future industrial development opportunities, it is not suitable for public use and should not be subject to Offers of Financial Assistance or Public Use conditions. NSR will consider negotiating with Orange County for interim trail use of all or part of the segment of the Line between milepost ZU 45.90 and milepost ZU 46.64 either under the National Trail Systems Act in connection with this proceeding or as a separate transaction for property that NSR owns in fee. Therefore, NSR also requests exemption of the abandonment of this Line from the provisions of 49 U.S.C. 10904 (offer of financial assistance procedures) and 49 U.S.C. 10905 (public use conditions).

Statement Concerning Federally Granted Right of Way

Based on information in NSR's possession, the line does not contain federally granted right-of-way. Any documentation later found in NSR's possession concerning this matter will be made available promptly to those requesting it.

Title Search

NSR is not aware of any reversionary interest that would affect transfer of title, and furthermore, believes that any such interest would not come into effect for the segment of the Line between Mileposts ZU 45.0 and ZU 45.9 due to its reclassification and retention for railroad purposes as industrial or house track.

Employee Protection

Since under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees, CNOTP is willing, as a condition to the Board granting this exemption, for the Board to order that the employee protective conditions set forth in *Oregon Short Line R. Co. -- Abandonment -- Goshen*, 360 I.C.C. 91 (1979), apply to this abandonment transaction.

Environmental and Energy Impact; Historical Report

Attached (Exhibit 2) are Environmental Report and Historic Reports prepared and distributed to the appropriate Federal, State and Local agencies in accordance with the Board's regulations. No further salvage operations will be undertaken as a result of the

abandonment. NSR requests that the Board find that the proposed abandonment and planned subsequent use of the Line will not result in any adverse effect on the environment or on historic places, properties or resources. Moreover, the New York State Office of Parks, Recreation and Historic Preservation has stated in a letter attached to this petition that the proposed undertaking will not result in an adverse effect on National Register of Historic Places Listed or Eligible properties. Thus, NSR requests that the Board impose no environmental or historic preservation process conditions on the consummation of the abandonment of the Line.

Passenger Service

There is no passenger service on the Line.

Draft Federal Register Notice

NSR attaches a draft notice of its petition to be published by the Board in the Federal Register within 20 days of the petition's filing and three computer discs compatible with the Board's current word processing capabilities with copies of this petition and the draft notice.

Notice

NSR is giving notice to the public agencies required to be served with petitions for exemption to abandon railroad lines by mailing copies of this petition for exemption to those agencies. Several additional governmental agencies have received notice of

the petition for exemption through the distribution of the Environmental Report. NSR has arranged for the publication of a newspaper notice concerning the filing of the petition for exemption in Orange County, NY, the only county through which the Line runs.

Discussion and Authorities

Under 49 U.S.C. 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when they find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of this transaction under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving NSR from the cost of owning and maintaining a line. Other aspects of the rail transportation policy will not be affected adversely by the grant of the exemption.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Nepera Chemical Company, the only recent railroad customer on the Line, permanently closed its facility on the Line in October 2005 and is

not expected to object to the proposed abandonment of the Line and reclassification of a portion of the Line as house or industrial track. Given that shippers will not be subject to an abuse of market power, the Board need not determine whether the proposed abandonment is limited in scope.

Conclusion

Therefore, Norfolk Southern Railway Company, respectfully petitions the Board under 49 U.S.C. 10502, to exempt the abandonment of approximately 1.64 miles of NSR railroad line between Milepost ZU 45.00 and Milepost ZU 46.64 at Harriman, NY, from the prior approval requirements of 49 U.S.C. 10903 and from the provisions of 49 U.S.C. 10904 (offer of financial assistance procedures) and 49 U.S.C. 10905 (public use conditions).

Respectfully submitted

NORFOLK SOUTHERN
RAILWAY COMPANY

BY


Daniel M. Mazur
Vice President

Dated: January 11, 2007


Of Counsel:
James R. Paschall
Senior General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
(757) 629-2759
fax (757) 533-4872

Attorney for
Norfolk Southern Railway Company


VERIFICATION

Commonwealth of Virginia)
) ss
City of Norfolk)

Daniel M. Mazur makes oath and says that he is Vice President of Norfolk Southern Railway Company, the petitioner herein; that has been authorized by the petitioner to verify and file with the Surface Transportation Board the foregoing petition in STB Docket No. AB-290 (Sub-No. 283X); that he has carefully examined all of the statements in the petition as well as the exhibits attached thereto and made a part thereof; that he has knowledge of the facts and matters relied upon in the petition; that he has obtained knowledge of certain facts from, and has relied in part upon, the business records of the company or persons with a business duty to keep those records accurately; and that all representations set forth in the petition and exhibits are true and correct to the best of his knowledge, information, and belief.


Daniel M. Mazur

Subscribed and sworn to before me, a notary public
in and for the State and City above named, this
10th day of January, 2007.


Notary Public

My commission expires: November 30, 2009

CERTIFICATE OF SERVICE

I certify that the foregoing petition in STB Docket No. AB-290 (Sub-No. 283X) has been served on Mr. Reginald Gilliam, New York Department of Transportation, Building 5, State Office Campus, Albany, NY 12232; the United States Department of Defense, Military Traffic Management Command (MTMCTEA), Transportation Engineering Agency, Railroads for National Defense Program, 720 Thimble Shoals, Blvd., Suite 130, Newport News, VA 23606-2574; National Park Service, Northeast Region, U. S. Custom House, 200 Chestnut Street, Fifth Floor, Philadelphia, PA 19106; and U. S. Department of Agriculture, Chief of the Forest Service, 1400 Independence Avenue, S.W., Washington, D.C. 20250 on January 11, 2007, by first class mail, postage prepaid.



James R. Paschall

Dated: January 11, 2007

Federal Register: _____, 2006 (Volume 71, Number ____)]
[Notices]
[Page ____]

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board
[STB Docket No. AB-290 (Sub-No. 283X)]

Norfolk Southern Railway Company - Abandonment - Petition for Exemption - at
Harriman, in Orange County, New York

On January 12, 2007 Norfolk Southern Railway Company (NSR), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903, to abandon an approximately 1.64-mile line of railroad, extending between Milepost ZU 45.00 and Milepost ZU 46.64 at Harriman (the Line) in Orange County, New York. The Line traverses United States Postal Service Zip code 10926 and includes the former station of Harriman, NY.

In addition to an exemption from 49 U.S.C. 10903, petitioner seeks exemption from 49 U.S.C. 10904 (offer of financial assistance procedures) and 49 U.S.C. 10905 (public use conditions) because it intends to retain and reclassify the segment of the Line between Milepost ZU 45.0 and Milepost ZU 45.9 as industrial or house track.

The Line does not contain federally granted rights-of-way. Any documentation in NSR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by _____, 2007. Unless petitioner's request for exemption from the provisions of 49 U.S.C. 10904 is granted, any offer of financial assistance (OFA) under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a \$1,200.00 filing fee. See 49 C.F.R. 1002.2(f)(25).

Unless petitioner's request for exemption from the provisions of 49 U.S.C. 10904 is granted, any request for a public use condition under 49 C.F.R. 1152.28 or any request for trail use/rail banking under 49 C.F.R. 1152.29 will be due no later than _____, 2007. Each trail use request must be accompanied by a \$200.00 filing fee. See 49 C.F.R. 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-290 (Sub-No. 283X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001, and (2) James R. Paschall, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510.

Replies to the NSR petition are due on or before _____, 2007.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 C.F.R. part 1152. Questions concerning environmental issues may be directed to the Board's Section of

Environmental Analysis (SEA) at (202) 565-1545. [TDD for the hearing impaired is available at 1-800-877-8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at www.stb.dot.gov

Decided: _____, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. _____ Filed _____]

BILLING CODE _____

CERTIFICATION

I hereby certify (1), pursuant to 49 C.F.R. §1105.11, that Environmental and Historic Reports related to the Petition for Exemption in Docket No. AB-290 (Sub-No. 283X), Norfolk Southern Railway Company - Abandonment - Petition for Exemption - at Harriman, in Orange County, New York, were submitted to the agencies identified in 49 C.F.R. §1105.7(b) and to the New York State Historic Preservation Officer (see Exhibit 2); and (2) that the newspaper notice required by 49 C.F.R. §1152.50(d)(1) was given through publication on December 15, 2006, in *The Times Herald Record*, which is a newspaper of general circulation in Orange County, NY, the county through which the Line runs (see Exhibit 3).


James R. Paschall

Dated: January 11, 2007

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EXHIBIT 2

ENVIRONMENTAL AND HISTORIC REPORTS

**ENVIRONMENTAL REPORT ON
PROPOSED RAIL LINE ABANDONMENT**

**NORFOLK SOUTHERN RAILWAY COMPANY
(BETWEEN MP ZU 45.00 AND MP ZU 46.64)
IN HARRIMAN, ORANGE COUNTY, NEW YORK**

**November 6, 2006
Revised December 13, 2006**

.....
**NORFOLK SOUTHERN RAILWAY COMPANY
THREE COMMERCIAL PLACE
NORFOLK, VIRGINIA 23510-9207**

ENVIRONMENTAL REPORT ON PROPOSED RAIL LINE ABANDONMENT

Abandonment of: 1.64 miles of track between Mileposts ZU 45.00 and ZU 46.64 in Harriman, Orange County, New York

49 CFR 1105.7(e)(1) Proposed Action and Alternatives.

Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

RESPONSE: Norfolk Southern Railway Company (NSR) proposes to abandon 1.64 miles of rail line, known as the Harriman Industrial Track, between railroad milepost ZU 45.00 and the end of the line at railroad milepost ZU 46.64 at Harriman, in Orange County, New York.

Following abandonment, the line segment between milepost ZU 45.00 and milepost ZU 45.90 will be reclassified as an industrial track and retained for future industrial development opportunities. This segment of the line has been dormant since October, 2005, when the sole shipper on the line segment, Nepera Chemical Company, permanently closed its plant.

The adjacent segment of track between mileposts ZU 45.90 and ZU 46.64 was taken out of service by Consolidated Rail Corporation (Conrail) several years prior to the acquisition of this line from Conrail in 1999 and the track materials were subsequently removed. NSR is unable to document the receipt and exercise of abandonment authority by Conrail over this 0.74 mile segment; therefore, it is being

included with this abandonment filing, however no further salvage or other disturbance of the right-of-way will be required on this segment. Orange County has expressed an interest in leasing the line segment between mileposts ZU 46.30 and ZU 46.64 for possible trail use.

The only alternatives would be not to abandon the line or to discontinue service on the line and retain the track in place. These alternatives are not satisfactory. Service over the line is not required to serve any shippers. NSR would incur opportunity and holding costs that would be absorbed by other customers were the line to be retained without being used for active rail freight service.

A map delineating the line proposed for abandonment is attached as **Appendix A**. The railroads' letter to federal, state and local government agencies is attached as **Appendix B**. Responses to the letter or other comments received as a result of consultations can be found in **Appendix C**.

49 CFR 1105.7(e)(2) Transportation system.

Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

RESPONSE: Effects of the proposed action on regional or local transportation systems and patterns are expected to be negligible. There is no rail freight or passenger traffic on the line segment proposed for abandonment. Consequently, no rail traffic will be diverted to highway or other modes as a result of the abandonment.

49 CFR 1105.7(e)(3) Land use.

(i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

RESPONSE: An outline of future land use plans was requested from the Orange County Executive and the Mayor of Harriman. The agencies were also asked to comment on the consistency of the proposed abandonment with existing land use plans. The Orange County Department of Planning has advised that they are interested in a portion of the line segment for trail use. The Village of Harriman also has advised that they are interested in acquiring the property. Copies of these responses are attached in **Exhibit C**.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

RESPONSE: No effects on any prime agricultural land are anticipated as a result of the abandonment. Consultation has been requested from the United States Department of Agriculture Natural Resources Conservation Service (USDA-NRCS). NSR has not yet received a response to this inquiry.

(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by Sec. 1105.9.

RESPONSE: Consultation was requested from the New York Department of State, Division of Coastal Resources. The response, a copy of which is attached in **Appendix C**, states that the project does not appear to affect coastal uses or resources.

(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10906 and explain why.

RESPONSE: The segment of the line between mileposts ZU 45.00 and ZU 45.90 will be reclassified as an industrial track following abandonment and thus will not be available for public use. The line segment between mileposts ZU 45.90 and ZU 46.30 may be suitable for public use. Orange County, New York has proposed to lease the remainder of the line between mileposts ZU 46.30 and ZU 46.64 for trail use.

49 CFR 1105.7(e)(4) Energy.

(i) Describe the effect of the proposed action on transportation of energy resources.

RESPONSE: Development and transportation of energy resources will not be affected by the abandonment as no freight or passenger traffic has moved over the line since October, 2005.

(ii) Describe the effect of the proposed action on recyclable commodities.

RESPONSE: Movement or recovery of recyclable commodities will not be affected by the abandonment as no freight or passenger traffic has moved over the line since October, 2005.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

RESPONSE: The proposed action will not result in an increase or decrease in

overall energy efficiency as no freight or passenger traffic has moved over the line since October, 2005.

*(iv) If the proposed action will cause diversions from rail to motor carriage of more than:
(A) 1,000 rail carloads a year; or
(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.*

RESPONSE: No traffic will be diverted from rail to motor carriage as a result of the proposed action.

49 CFR 1105.7(e)(5) Air.

*(i) If the proposed action will result in either:
(A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or
(B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or
(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions.*

RESPONSE: The above thresholds will not be exceeded.

*(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either:
(A) An increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line,
(B) An increase in rail yard activity of at least 20 percent (measured by carload activity), or
(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan.*

RESPONSE: The above thresholds will not be exceeded. Orange County, New York is in attainment for all National Ambient Air Quality Standard (NAAQS) pollutants, except for particulate matter, according to the U.S. Environmental Protection Agency.

(iii) If transportation of ozone depleting materials (such as nitrogen oxide and Freon®) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

RESPONSE: Not applicable.

49 CFR 1105.7(e)(6) Noise.

If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:

- (i) An incremental increase in noise levels of three decibels Ldn or more; or*
- (ii) An increase to a noise level of 65 decibels Ldn or greater.*

If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

RESPONSE: The above thresholds will not be exceeded.

49 CFR 1105.7(e)(7) Safety.

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

RESPONSE: Abandonment of the captioned rail line will have no significant effect upon public health or safety. There are no crossings at grade on the segment to be abandoned.

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

RESPONSE: Not applicable.

(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

RESPONSE: NSR has no knowledge of hazardous waste sites or sites where there have been known hazardous material spills on the right of way.

49 CFR 1105.7(e)(8) Biological Resources.

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

RESPONSE: A consultation was requested from the U.S. Fish and Wildlife Service (USFWS) to ascertain any impacts to surrounding habitats and species. NS has not yet received a response to this inquiry.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

RESPONSE: The line segment proposed for abandonment does not pass through state parks or forests, national parks or forests, or wildlife sanctuaries. The line

passes nearby the Harriman State Park. No adverse effects on wildlife sanctuaries, National Parks or Forests, or State Parks or Forests are anticipated.

49 CFR 1105.7(e)(9) Water.

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

RESPONSE: There are no plans to remove or alter the contour of the roadbed underlying any part of the rail line to be abandoned. Since there are no plans to undertake in-stream work, or dredge and/or fill any materials in connection with the proposed abandonment, water quality impacts are not expected in connection with the proposed action. Consultation was requested from the New York Department of Environmental Conservation and from the United States Environmental Protection Agency.

The New York State Department of Environmental Conservation has concluded that the proposed action is consistent with State Water Quality Standards and no state permits under Section 402 of the Clean Water Act are required. A copy of the response is attached in **Appendix C**.

NSR has not yet received a response from the United States Environmental Protection Agency.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

RESPONSE: The geometry of the roadbed will not be altered and no discernible effects on either 100-year flood plains or adjacent wetlands are expected in connection with the proposed abandonment. Consequently, NSR does not believe a Section 404 permit will be required in connection with the proposed abandonment. A consultation was requested from the US Army Corps of Engineers. In their response, a copy of which is attached in **Appendix C**, the NY District Corps of Engineers states that no Section 404 permit is needed.

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action.

RESPONSE: There are no intentions to remove or alter the roadbed underlying the line to be abandoned, to undertake in-stream work or to dredge or to use any fill materials. There should be no significant effects to water quality.

As stated above, the New York State Department of Environmental Conservation has concluded that the proposed action is consistent with State Water Quality Standards and no state permits under Section 402 of the Clean Water Act are required. A copy of the response is attached in **Appendix C**.

49 CFR 1105.7(e)(10) Proposed Mitigation.

Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

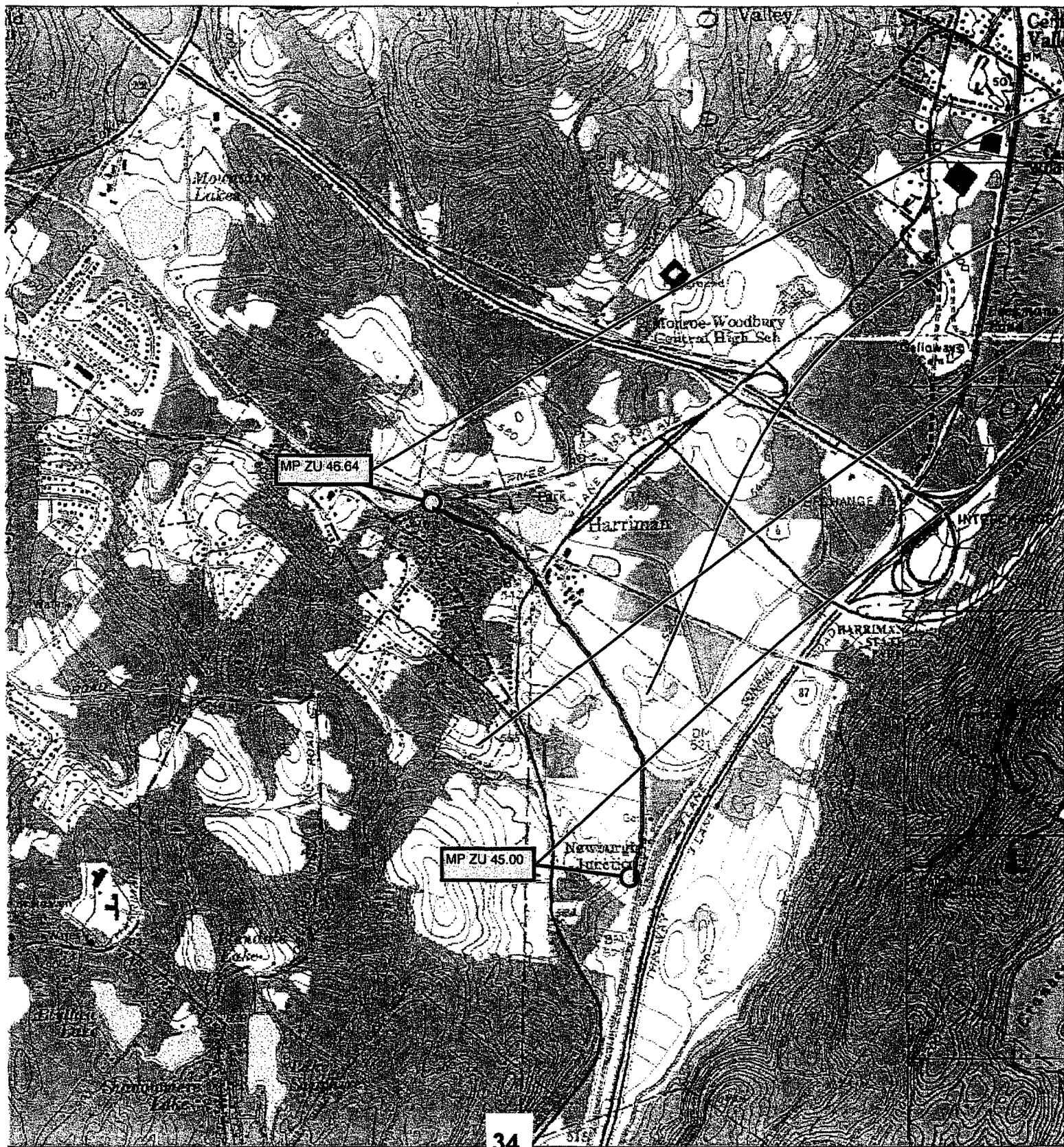
RESPONSE: Abandonment of the involved rail line is not expected to produce adverse environmental impacts. NSR will undertake all reasonable mitigation to assure the abandonment does not produce adverse environmental impacts.

Additional Information - National Geodetic Survey Marker

Attached in **Appendix C** is a response from the National Geodetic Survey that states there is 1 National Geodetic Survey marker on or near the Line. NGS requests a 90-day advance notice to attempt formal relocation if the marker will be disturbed by the abandonment.

APPENDIX A

Site Map



34

Norfolk Southern Railway Company
Abandonment
MP ZU 45.00 - MP ZU 46.64
Harriman, Orange County, New York

APPENDIX B

Agency Letters



Strategic Planning Department
Three Commercial Place
Norfolk, VA 23510-9207

November 6, 2006

RE: Docket No. AB-290 (Sub-No. 283X), Norfolk Southern Railway Company
Abandonment – in Orange County, New York

Dear Sir/Madam:

Norfolk Southern Railway Company (NSR) plans to request authority from the Surface Transportation Board (STB) to abandon the segment of rail line between Milepost ZU 45.00 and MP ZU 46.64, a distance of 1.64 miles, located in Harriman, Orange County, New York.

Enclosed is an Environmental Report which describes the proposed abandonment and other pertinent information. A map of the proposed track abandonment can be found in Appendix A of this report.

NSR does not anticipate adverse environmental impacts; however, if you identify any adverse environmental effects please describe the actions that would assist in alleviating them. Please provide us with a written response indicating any concerns or lack thereof, which will be included in an Environmental Report and sent to the Surface Transportation Board (STB). Appendix B of this report lists the various agencies receiving it.

This report is also being provided so that you may submit information that will form the basis for the STB's independent environmental analysis of the proceeding. If you believe any of the information is incorrect, if you think pertinent information is missing, or if you have any questions about the Board's Environmental Review process, please contact the Section of Environmental Analysis (SEA) by telephone at (202) 565-1552 or by mail to:

Surface Transportation Board,
1925 K Street, N.W., Room 3219
Washington DC 20423-001

Please refer to the above Docket when contacting the STB. Applicable statutes and regulations impose stringent deadlines for processing this action. For this reason your written comments (with a copy to us) would be appreciated within three weeks.

Your comments will be considered by the Board in evaluating the environmental impacts of the contemplated action. In order for us to consider your input prior to filing with the STB, NSR must receive your comments within three weeks. Please provide information to Kathy Headrick by email at kathy.headrick@nscorp.com or by mail to:

Kathy Headrick
Coordinator-Abandonments
Norfolk Southern Corporation
Strategic Planning Department
Three Commercial Place
Norfolk, VA 23510

Sincerely,

A handwritten signature in black ink, appearing to read "Marcellus C. Kirchner". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Marcellus C. Kirchner
Director Strategic Planning
Norfolk Southern Railway Company

RECIPIENT LIST

Proposed Rail Line Abandonment of the segment of rail line between MP ZU 45.00 and MP ZU 46.64 at Harriman, Orange County, New York, a distance of 1.64 miles.

Edward A. Diana, County Executive
Orange County Government Center
255 Main Street
Goshen, NY 10924

Fred Budde, Sr. Planner
Orange County Dept. of Planning
1887 County Building
124 Main Street
Goshen, NY 10924

Stephen Welle, Mayor
Village of Harriman
1 Church Street
Harriman, NY 10926

Benjamin Ostrer, Village Attorney
Village of Harriman
P. O. Box 946
1 Church Street
Harriman, NY 10926

New York Department of State
Division of Coastal Resources
41 State Street
Albany, NY 12231

Laurence Larson
District Conservationist
USDA-NRCS
225 Dolson Avenue, Room 103
Middleton, NY 10940

Marvin Moriarity, Regional Director
USFWS – Region 5
300 West State Center Drive
Hadley, MA 01035-0589

United States Army Corps of Engineers
New York District
Jacob K. Javits Federal Building
26 Federal Plaza, Room 2109
New York, NY 10278-0090

United States Environmental
Protection Agency, Region 2
Jacob K. Javits Federal Building
290 Broadway
New York, NY 10007

Sandra Allen, Director – Division of Water
New York Department of
Environmental Conservation
625 Broadway
Albany, NY 12233

New York Department of Transportation
Building 5, State Office Campus
Albany, NY 12232

National Park Service
Northeast Region
U. S. Custom House
200 Chestnut Street, Fifth Floor
Philadelphia, PA 19106

National Geodetic Survey
1315 East West Highway
Silver Spring, MD 20910-3282

APPENDIX C

Agency Responses

AGENCY CONSULTATION

Harriman, NY

Agency	Fred Budde, Sr. Planner Orange County Dept. of Planning 1887 County Building 124 Main Street Goshen, NY 10924 (845)291-2318
Date	October 4, 2006
Time (est)	3:00 p.m.
Comments	Mr. Budde called in response to NS' initial letter to the Orange County Executive. Mr. Budde expressed the county's interest in using a portion of the line segment proposed for abandonment to extend the Heritage Trail. He was unaware of any on-going negotiations with NS to lease the segment, but would check into the matter further.



Village of Harriman

MAYOR

Stephen H. Welle

DEPUTY MAYOR

Edward B. Stuart, Jr.

TRUSTEES

Ronald Klare
Christine E. Sacher
Peter Licata

VILLAGE CLERK**TREASURER**

Evelyn E. Nazzaro

VILLAGE ATTORNEY

Benjamin Ostrer

September 26, 2006

Marcellus C. Kirchner
Director of Strategic Planning
Norfolk Southern Commercial Corporation
Three Commercial Place
Norfolk, Virginia 25310-2191

**RE: Docket No. AB-290 (Sub-283X), Norfolk Southern Railway Company
Abandonment - in Harriman, Orange County, New York**

Dear Mr. Kirchner:

We serve as attorneys for the Village of Harriman. Further to our telephone inquiry, please allow this to serve as confirmation that the Village of Harriman is interested in acquiring the above referenced parcel. The railroad property would be incorporated into the Village's "Mary Harriman Park" which is contiguous with the aforementioned property. Mary Harriman Park contains picnic areas, ball fields, roller skating rink and rest rooms. The Village may also use a portion of the rail bed to expand Village Highway and Fire Protection facilities.

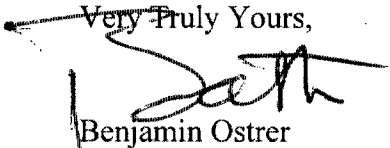
It is our understanding that Environmental and Historical Reports have been requested, and are expected within the next few weeks, and will be forwarded to the Surface Transportation Board in Washington, D.C., for authorization of the abandonment of the property. If abandonment is deemed appropriate, that finding may include a determination regarding future conditions and/or restrictions of use for the property. We are hopeful the Village's intended use would comply with any such restriction and/or condition.

Please advise as to whether or not providing further information pertaining to the Village's intent with regard to the property would be helpful at this juncture. It would be greatly appreciated if we could be kept informed regarding the progress of the

abandonment. Please feel free to contact me.

Thank you.

Very Truly Yours,



Benjamin Ostrer

BO/sm

cc: Mayor Stephen Welle

Evelyn Nazzaro, Village Clerk Treasurer

Headrick, Kathy, C

From: Rebecca Madlin [RMadlin@dos.state.ny.us]
Sent: Tuesday, September 19, 2006 4:58 PM
To: kathy.headrick@nscorp.com
Subject: Docket # AB-290

I received the Norfolk Southern Corporation's letter requesting avdisement if the proposed rail line abandonment between Milepost ZU 45 and Milpost ZU 46.64 is within the New York State Coastal Area or would affect coastal uses or resources. From the information provided, the project does not appear to affect coastal uses or resources.

Please let me know if I can be of further assistance.

Rebecca Madlin
Coastal Resources Specialist
NYS Department of State
Division of Coastal Resources
41 State Street
Albany, NY 12231
Phone: (518) 486-7669
Fax: (518) 473-2464
rmadlin@dos.state.ny.us
<http://nyswaterfronts.com>

New York State Department of Environmental Conservation

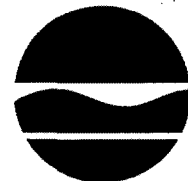
Division of Water

Bureau of Water Permits, 4th Floor

625 Broadway, Albany, New York 12233-3505

Phone: (518) 402-8112 • FAX: (518) 402-9029

Website: www.dec.state.ny.us



Denise M. Sheehan
Commissioner

September 21, 2006

Ms. Kathy Headrick
Coordinator Abandonments
Norfolk Southern Corporation
3 Commercial Place
Norfolk, VA 23510

Dear Ms. Headrick:

I have reviewed your letter dated August 30, 2006 addressed to Sandra Allen, Director, Division of Water, New York State Department of Environmental Conservation, indicating that there will be no removal of track and materials nor will the underlying roadbed be disturbed resulting from the abandonment of 1.64 miles of rail line between Milepost ZU 45.00 and Milepost ZU 46.64 in Harriman, located in Orange County, New York.

Based on the information provided in your letter, I have concluded that the proposed action is consistent with State Water Quality Standards and no state permits under Section 402 of the Clean Water Act are required.

If you have any additional questions or concerns, please feel free to contact me at (518) 402-8251.

Sincerely,

Richard E. Draper, P.E.
Director
Bureau of Water Permits

Headrick, Kathy, C

From: Orzel, Brian A NAN02 [Brian.A.Orzel@nan02.usace.army.mil]
Sent: Thursday, October 05, 2006 4:06 PM
To: kathy.headrick@nscorp.com
Subject: Docket No AB-290 (Sub-No. 283X) Abandonment, Hariman, NY

Ms. Headrick,

This is in response to your letter dated August 30, 2006. My understanding of abandonment of a railroad line is that you basically walk away from it. If no actual ground work, either in or around the railroad bed, is proposed, you don't need a permit from this office. Our jurisdiction under Section 404 of the Clean Water Act is triggered when fill material is placed within waters of the United States, including wetlands. In many areas, wetlands lie at the toe of slope of the railroad bed. But, if you are not disturbing the wetland, then you don't need a permit. Does this abandonment have anything to do with the Metro North commuter line?

Brian Orzel
Project Manager
Western Permits Section
NY District Corps of Engineers

Headrick, Kathy, C

From: Simon Monroe [Simon.Monroe@noaa.gov]
Sent: Friday, December 08, 2006 3:27 PM
To: Gilbert Mitchell
Cc: National Society of Professional Surveyors; Surface Transportation Board;
kathy.headrick@nscorp.com
Subject: [Fwd: [Fwd: NGS Response, STB docket AB-290 (SUB NO. 283X)]]

Thank you for sharing your railroad abandonment environmental report for Harriman, Orange County, New York.

Approximately 01 geodetic survey marks may be located in the area described. If marks will be disturbed by the abandonment, NGS requests 90-day advance notice to attempt their formal relocation. These marks are described on the attached file. Additional advice is provided at <http://geodesy.noaa.gov/marks/railroads/>

Dist	PID...	H V	Vert_Source	Approx.	Approx..	Stab	Designation
....	LY0371	. 2	88/ADJUSTED	N411831	W0740842	B...	E 78

**Environmental Report
Certificate of Service**

Pursuant to the requirements of 49 C.F.R. § 1105.8(c), the undersigned hereby certifies that a copy of the Environmental Report in Docket No. AB-290 (Sub-No. 283X) was mailed via first class mail on November 6, 2006, to the following parties:

Edward A. Diana, County Executive
Orange County Government Center
255 Main Street
Goshen, NY 10924

Fred Budde, Sr. Planner
Orange County Dept. of Planning
1887 County Building
124 Main Street
Goshen, NY 10924

Stephen Welle, Mayor
Village of Harriman
1 Church Street
Harriman, NY 10926

Benjamin Ostrer, Village Attorney
Village of Harriman
P. O. Box 946
1 Church Street
Harriman, NY 10926

New York Department of State
Division of Coastal Resources
41 State Street
Albany, NY 12231

Laurence Larson
District Conservationist
USDA-NRCS
225 Dolson Avenue, Room 103
Middleton, NY 10940

Marvin Moriarity, Regional Director
USFWS – Region 5
300 West State Center Drive
Hadley, MA 01035-0589

U.S. Army Corps of Engineers
New York District
Jacob K. Javits Federal Building
26 Federal Plaza, Room 2109
New York, NY 10278-0090

United States Environmental
Protection Agency, Region 2
Jacob K. Javits Federal Building
290 Broadway
New York, NY 10007

Sandra Allen, Director – Div of Water
NY Dept of Environ. Conservation
625 Broadway
Albany, NY 12233

N. Y. Department of Transportation
Building 5, State Office Campus
Albany, NY 12232

National Park Service
Northeast Region
U. S. Custom House
200 Chestnut Street, Fifth Floor
Philadelphia, PA 19106

National Geodetic Survey
1315 East West Highway
Silver Spring, MD 20910-3282



Marcellus C. Kirchner

November 6, 2006

Historic Report

Proposed Rail Line Abandonment

Proposed Action and Alternatives

Norfolk Southern Railway Company (NSR) proposes to abandon 1.64 miles of rail line, known as the Harriman Industrial Track, between railroad milepost ZU 45.00 and the end of the line at railroad milepost ZU 46.64 at Harriman, in Orange County, New York.

Following abandonment, the line segment between milepost ZU 45.00 and milepost ZU 45.90 will be reclassified as an industrial track and retained for future industrial development opportunities. This segment of the line has been dormant since October, 2005, when the sole shipper on the line segment, Nepera Chemical Company, permanently closed its plant.

The adjacent segment of track between mileposts ZU 45.90 and ZU 46.64 was taken out of service and the track materials removed by Consolidated Rail Corporation (Conrail) several years prior to the acquisition of this line from Conrail in 1999. NSR is unable to document the receipt and exercise of abandonment authority by Conrail over this 0.74 mile segment; therefore, it is being included with this abandonment filing, however no further salvage or other disturbance of the right-of-way will be required on this segment. Orange County has expressed an interest in leasing the segment between mileposts ZU 46.30

and ZU 46.64 for possible trail use.

The alternatives to abandonment of the entire line are to not abandon the line or to discontinue service over the active segment of the line and retain the track in place. These alternatives are not satisfactory. Norfolk Southern would incur opportunity and other holding costs that would need to be covered by other customers were this line segment to be retained.

Additional Information

U.S.G.S Topographic Map

Maps were furnished to the New York State Historic Preservation Office.

Written Description of Right of Way

The width of the corridor ranges from 66 to 100 feet; (33 to 50 feet on each side of the track centerline). The surrounding property is predominately undeveloped and industrial.

Photographs

Photographs were furnished to the New York State Historic Preservation Office.

Date of Construction of Structures

The sole structure on the line segment proposed for abandonment is a 55 foot through plate girder bridge constructed in 1934 over NY Route 17 at milepost ZU 45.91. This bridge is not original to the line.

History of Operations and Changes Contemplated

The segment of railroad proposed for abandonment was once part of the original Erie Railroad main line which originated in Piermont, New York (north of New York City) and was operating as far as Port Jervis, New York by January 7, 1848. In 1984 most of the main line between Harriman (Newburgh Junction) and Middletown, NY was abandoned, and service moved to the slightly longer Erie freight cutoff, known as the Graham Line.

The Erie Railroad was chartered by the State of New York in April of 1832 as the *New York and Erie Railroad Company*. Plans for the railroad extended from Piermont to Dunkirk, NY on Lake Erie. Construction began in 1836 and the line finally reached Port Jervis in 1848 and Dunkirk in 1851. Another predecessor is the Buffalo, New York and Erie, organized on October 24, 1857 and successor of the Buffalo, Corning and New York and the Buffalo and New York City Railroad Company. In 1861 the New York and Erie purchased a portion of the Buffalo and New York City Railroad between Hornellsville and Attica. In February of 1863 the Buffalo, New York and Erie, was leased along with a segment of line formerly belonging to the Buffalo and New York City running between Attica and Buffalo. Also obtained in this transaction was a segment of

rail running from Attica to Corning and formerly belonging to the Buffalo, Corning and New York. On April 24, 1878 the road was sold under foreclosure and reorganized as the New York, Lake Erie and Western Railroad. In 1883, the Erie's new extension into Chicago opened between Marion, Ohio and Hammond, Indiana.

On November 13, 1895 the *Erie Railroad Company* was organized and took over the properties of the New York, Lake Erie and Western, the New York, Pennsylvania & Ohio, the Chicago and Erie and several other smaller lines throughout New York, New Jersey, Pennsylvania, Ohio, Indiana, and Illinois. While under the ownership of the Erie, the segment of line proposed for abandonment was referred to as the Attica section of the Rochester Division which ran from Painted Post, NY through Avon, NY to Attica, NY.

1956, the Erie began to discuss potential consolidation with the Delaware, Lackawanna and Western Railway which served many of the same markets as the Erie. Both properties were in financial difficulties at the time. A merger agreement was reached in 1959, and Interstate Commerce Commission authorization of the combination became effective October 17, 1960. The new company, comprising 3,031 route miles, would be known as the *Erie-Lackawanna Railroad* (the hyphen was retained until 1963). Because of intervening labor litigation, the merger was not actually placed into effect until June 1961.

Erie Lackawanna sought inclusion in the merger between the Norfolk and Western and Chesapeake and Ohio systems which was announced and filed at

the Interstate Commerce Commission but never consummated. As a result, Erie Lackawanna was required to be placed under a new holding company of the Norfolk and Western called *Dereco, Inc.* The financial condition of the Erie Lackawanna continued to decline, however, and the extensive destruction of its physical plant resulting from Hurricane Agnes in 1972 finally resulted in a filing for Chapter 77 bankruptcy on June 26, 1972. Thomas F. Patton and Ralph Tyler, Jr. were appointed as trustees.

The Erie Lackawanna initially sought to reorganize independently and thus resisted joining other bankrupt eastern and Midwestern railroads in reorganization under the aegis of the United States Railway Association pursuant to the Regional Railroad Reorganization Act of 1973 (3-R Act). The financial condition of the Erie Lackawanna continued to deteriorate, exacerbated by rapidly escalating materials prices, and on January 9, 1975 it advised the Federal government that it wished to become a "railroad in reorganization" under the 3-R Act. Although this request came too late for inclusion in the *Preliminary System Plan* which was issued on February 26, 1975, the Erie Lackawanna was included in the *Final System Plan* issued by the U.S. Railway Association in July of that year. The Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act) placed the Final System Plan into law. Erie Lackawanna lines designated for retention, including the subject line, thus came under the operation of the newly-formed *Consolidated Rail Corporation* (Conrail) effective April 1, 1976.

Conrail returned to profitability in 1981, and was sold to the public in 1987 in the largest initial public offering in U.S. history.

A good history of the Erie Lackawanna is found in H. Roger Grant, *Erie Lackawanna: Death of an American Railroad, 1938-1992* (Stanford, CA: Stanford University Press, 1994), and a history of the Erie Railroad is provided by *Men of Erie: A Story of Human Effort* (New York: Random House, 1946).

Norfolk Southern Corporation ("NSC"), parent to Norfolk Southern Railway Company ("NSR"), entered into a Transaction Agreement (the "Conrail Transaction Agreement") among NSC, NSR, CSX Corporation ("CSX"), CSX Transportation, Inc. ("CSXT"), a wholly-owned subsidiary of CSX; Conrail Inc. ("CRR"); Consolidated Rail Corporation ("Conrail"), a wholly-owned subsidiary of CRR, and CRR Holdings LLC, dated June 10, 1997, pursuant to which CSX and NSC indirectly acquired all the outstanding capital stock of CRR. The Conrail Transaction Agreement was approved by the Surface Transportation Board ("STB") in a decision served July 23, 1998 in STB Finance Docket No. 33388, *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases/Agreements – Conrail Inc. and Consolidated Rail Corporation*. The transaction was closed and became effective June 1, 1999.

Another predecessor to Norfolk Southern is the Norfolk and Western Railway Company, incorporated by special act of Virginia approved on January 15, 1896, and succeeded, under a plan of reorganization, to the properties of Norfolk and Western Railroad Company, the Lynchburg and Durham Railroad Company (that had been sold first to the Norfolk, Lynchburg and Durham Railroad Company) and the Roanoke and Southern Railway Company (that had

been sold first to the Norfolk, Roanoke and Southern Railroad Company). The two companies in parenthesis were organized on the dates of purchase for the sole purpose of acquiring and transferring the property of the named companies to Norfolk and Western Railway Company.

In 1982 the Norfolk and Western merged with the Southern Railway Company; a railroad that was incorporated under the laws of the Commonwealth of Virginia on June 18, 1894. Southern Railway Company was successor to Richmond and West Point Terminal Railway and Warehouse Company (incorporated in 1880) and its subsidiaries, including principal subsidiaries Richmond and Danville Railroad Company (1847), the East Tennessee, Virginia and Georgia Railway Company (1887), Charlotte, Columbia and Augusta Railroad Company (1869), Virginia Midland Railway Company (1880), Columbia and Greenville Railroad Company (1880), Western North Carolina Railroad Company (1880) and Georgia Pacific Railway Company (1881). Except for leased lines of the Atlanta and Charlotte Air Line Railway Company (1877) and the North Carolina Railroad Company (1868), these railroads were declared insolvent and placed in receivers' hand in 1892. In 1894, these insolvent railroads were sold at foreclosure sales and deeded to the Southern Railway Company. Southern Railway Company also then leased the Atlanta and Charlotte Air Line Railway Company and North Carolina Railroad Company properties. Southern Railway Company acquired several other smaller companies in 1894. After its acquisitions and leases in 1894, Southern Railway Company operated 4,432 miles of railway line, 3,940 miles of which were owned

and 492 miles of which were leased. The Southern and its predecessors are credited for many firsts in the railroad industry including the South Carolina Canal & Rail Road Co being the first to operate at night or carry passengers as well as U.S. troops and mail. Southern Railway was the first major U.S. railroad to convert to diesel power locomotives as well. The Southern Railway was the longest line in the south and known for its modernization and innovation including the use of computers, mechanization of track maintenance, improved car efficiency, and tight fiscal policy.

Norfolk Southern Corporation, a non-carrier holding company, was incorporated in the Commonwealth of Virginia on July 23, 1980. Based on an Agreement of Merger and Reorganization, dated July 31, 1980, and eventual Interstate Commerce Commission approval, Norfolk Southern Corporation acquired control of Norfolk and Western Railway Company and Southern Railway Company and their subsidiaries.

On December 4, 1980, Norfolk Southern Corporation, Norfolk and Western Railway Company, and Southern Railway Company filed a joint application to the ICC in Finance Docket No. 29430 (Sub-No. 1), pursuant to which they sought authority under 49 U.S.C. 11343 for Norfolk Southern Corporation to acquire control through stock ownership of Norfolk and Western Railway Company and its subsidiary carrier companies, and of Southern Railway Company and its consolidated system companies.

Under approval granted by the ICC in Finance Docket No. 29430 (Sub-No.1), *Norfolk Southern Corporation – Control – Norfolk and Western Railway*

Company and Southern Railway Company, 366 I.C.C. 173 (1982), dated March 19, 1982, Norfolk Southern Corporation acquired control of Norfolk and Western Railway Company and Southern Railway Company on June 1, 1982.

Two books on the Norfolk and Western Railway Company and Southern Railway Company systems provide detailed information on the companies' history and development to the time of the Norfolk Southern consolidation. They are: E. F. Pat Striplin, *The Norfolk and Western: A History* (Roanoke, VA: The Norfolk and Western Railway Co., 1981) and Burke Davis, *The Southern Railway: Road of the Innovators* (Chapel Hill, NC: University of North Carolina Press, 1985).

Effective December 31, 1990, Southern Railway Company changed its name to Norfolk Southern Railway Company. Norfolk and Western Railway Company became a wholly-owned subsidiary of Norfolk Southern Railway Company rather than a subsidiary of Norfolk Southern Corporation. Then effective September 1, 1998 pursuant to a notice of exemption filed in STB Finance Docket No. 33648, *Norfolk Southern Railway Company – Merger Exemption – Norfolk and Western Railway Company*, served August 31, 1998, Norfolk Southern Railway Company merged Norfolk and Western Railway Company into NSR.

The Village of Harriman, New York is named after railroad financier E. H. Harriman. Orange County is among the first twelve New York Counties established in 1683. Rockland County was split off from Orange County in 1798.

The change contemplated in the operation of the subject railroad line in the Village of Harriman, New York, is for Norfolk Southern Railway Company to abandon the subject unprofitable line of railroad, reclassify the segment between milepost ZU 45.00 and milepost ZU 45.90 as industrial track for preservation for future industrial development opportunities, to make available for trail use the line between milepost ZU 46.30 and milepost ZU 46.64, and to the extent of its title to the real estate to deal with entire the right-of-way as ordinary real estate no longer subject to a common carrier obligation. There is no feasible alternative to the abandonment action because there is not enough revenue from railroad traffic on the line to cover the costs of ownership, maintenance and operation of the property.

Summary of Documents in Carrier's Possession that Might be Useful for Documenting a Structure that is Found to be Historic

While plans may be available for the structure on the line, it is most likely that any such plans are standard plans used for the construction of similar structures on the dates of construction.

Opinion Regarding Criteria for Listing in the National Register of Historic Places

NSR's opinion is that neither the structure on the line to be abandoned nor the line itself meets the criteria for listing in the National Register of Historic

Places. NSR has no reason to believe that there is any likelihood of finding historic properties on the line proposed for abandonment.

Subsurface Ground Conditions that Might Affect Archaeological Recovery

NSR is not aware of any prior subsurface ground disturbances or environmental conditions that would affect archaeological recovery. Moreover, abandonment of the line and any salvage of material from its surface will not affect any potential archaeological resources. The subsurface of the right-of-way was initially disturbed in the construction of the railroad line by grading and filling. Abandonment of the line will not result in activities below the surface, or below the level of initial disturbance.

Follow-Up Information

NSR will provide any relevant and available additional information as required or appropriate.

**Historic Report
Certificate of Service**


Pursuant to the requirements of 49 C.F.R. § 1105.8(c), the undersigned hereby certifies that a copy of the Historic Report in Docket No. AB-290 (Sub-No. 283X) was mailed via first class mail on November 8, 2006 to the following party:

Ms. Bernadette Castro, SHPO
Parks, Recreation & Historic Preservation
Agency Building #1
Empire State Plaza
Albany, NY 12238



Marcellus C. Kirchner

November 8, 2006



Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

Marcellus C. Kirchner
Director Strategic Planning
(757) 629-2679
(757) 823-5807 FAX

November 8, 2006

Ms. Bernadette Castro, SHPO
Parks, Recreation & Historic Preservation
Agency Building #1
Empire State Plaza
Albany, NY 12238

RE: Docket No AB-290 (Sub-No. 283X), Norfolk Southern Railway Company –
Abandonment, Orange County, New York

Dear Ms. Castro:

Norfolk Southern Railway Company soon expects to file with the Surface Transportation Board a Petition for Exemption seeking authority to abandon 1.64 miles of rail line between railroad mileposts ZU 45.00 and ZU 46.64 in Harriman, Orange County, New York. Enclosed is a Historic Report describing the proposed action and any expected historic effects. Also enclosed is a topographical map of the affected area, as well as photographs of the bridge located on the line.

We are providing this report so that you may review the information that will form the basis for the Board's independent environmental analysis of this proceeding. If you believe any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's environmental review process, please contact the Section of Environmental Analysis (SEA), Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001, Telephone (202) 565-1545, and refer to the above Docket. Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments (with a copy to us) would be appreciated as soon as possible. Please refer your comments to me by mail at the above address or by email at marc.kirchner@nscorp.com.

Your comments will be considered by the Board in evaluating the historic impacts of the contemplated action. If there are any questions concerning this proposal, please do not hesitate to contact me.

Sincerely,



Marcellus C. Kirchner

Enclosure

cc: James R. Paschall, Esq.



New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

December 20, 2006

Marcellus C. Kirchner
Norfolk Southern Corporation
3 Commercial Place
Norfolk, Virginia 23510-2191

Re: **STB**
Rail Abandonment (1.64 mile)
Monroe-Harriman, Orange Co.
06PR06448

Dear Mr. Kirchner:

Thank you for requesting the comment of the State Historic Preservation Office (SHPO). We have had an opportunity to review the project in accordance with Section 106 of the National Preservation Act of 1966 and relevant implementing regulations.

Enclosed, please find a Resource Evaluation that identifies the subject property as being eligible for listing in the National Register of Historic Places.

Based upon our review, the proposed abandonment will result in **No Adverse Effect** upon properties in or eligible for inclusion in the State and National Registers of Historic Places.

If you have any questions regarding this letter or the project, please feel free to contact me at your convenience. Ext. 3273.

Sincerely,

Kenneth Markunas
Historic Sites
Restoration Coordinator

Attachment: Resource Evaluation

RESOURCE EVALUATION

DATE: 14 December 2006 STAFF: Bill Krattinger

PROPERTY: Original New York & Erie Railroad Company Alignment; Piermont, Rockland County to Dunkirk, Chautauqua County

PROJECT REF: 06PR06448; Norfolk Southern Railway Company, Milepost 45.00 to Milepost 46.64; Town of Monroe and Village of Harriman, Orange County

- I. ☐ Property is individually listed on SR/NR:
name of listing:
- ☐ Property is a contributing component of a SR/NR district:
name of district:
- II. ☒ Property meets eligibility criteria.
- ☐ Property contributes to a district which appears to meet eligibility criteria.
- Pre SRB: ☐ Post SRB: ☐ SRB date

Criteria for Inclusion in the National Register:

- A. ☒ Associated with events that have made a significant contribution to the broad patterns of our history;
- B. ☐ Associated with the lives of persons significant in our past;
- C. ☒ Embodies the distinctive characteristics of a type, period or method of construction; or represents the work of a master; or possess high artistic values; or represents a significant and distinguishable entity whose components may lack individual distinction;
- D. ☐ Have yielded, or may be likely to yield information important in prehistory or history.

STATEMENT OF SIGNIFICANCE:

Note: This eligibility has been issued with regards to the 1.64 miles of railroad alignment owned by Norfolk Southern Railroad in the Town of Monroe and the Village of Harriman, Orange County, however it applies to the entire historic alignment of the first manifestation of the New York & Erie Railroad constructed between 1836 and 1851 from Piermont to Dunkirk. Individual features and structures associated with this first period of the New York & Erie Railroad Company's history such as engineering features are likewise considered in this eligibility, however those features that have subsequently been altered, reworked or replaced will require further evaluation. Other related railroad lines that were subsequently subsumed by the New York & Erie Railroad Company during the course of the 19th century—as well as spur lines constructed to link the main line with other locales— will likewise require further evaluation.

The New York & Erie Railroad Company was chartered in April 1832 with the goal of linking the Hudson River with Lake Erie by wide-gauge rail. Construction on the line began in 1836, with the railroad's eastern terminus established on the west bank of the Hudson River at Piermont—formerly

Tappan Landing—in Rockland County. The line was completed to Goshen, Orange County, in 1841; to the Delaware River at Port Jervis, Orange County, in 1848; to Owego, Tioga County in 1849; and to Dunkirk in Chautauqua County on Lake Erie in May 1851, via Little Valley, Cattaraugus and Dayton. At Piermont a 4,000 foot-long pier was built into the Hudson River to facilitate the movement of goods and passengers from boats to the railroad, and the need for support facilities spurred the hamlet's development. A major backer of the New York & Erie Railroad, Eleazar Lord, proved instrumental in placing the eastern terminus at Piermont and likewise resided outside the village in a large villa built atop Mt. Nebo. Lord served three separate terms as the president of the New York & Erie—he was the company first president in 1833—and had accumulated considerable wealth as an insurance entrepreneur and as the founder and first president of the Manhattan Fire Insurance Company. In Dunkirk the New York & Erie Railroad Company maintained a large hotel, a freight depot and tracks to the boat slips in Dunkirk Harbor. After a link connected the New York & Erie with Buffalo the importance of Dunkirk decreased as Buffalo emerged as the primary locale for the transfer cargo to Great Lakes ships.

This first manifestation of the New York & Erie Railroad, which linked the Hudson River with distant Lake Erie, was a major engineering accomplishment with significant economic benefit for New York State—particularly the Southern Tier region—and provided a definitive statement of the importance of rail transport in the mid-19th century New York, following the earlier reliance upon overland turnpike transportation and later the state canal system. Significant engineering accomplishments included the construction of the pier at Piermont, as well as the Starrucca Viaduct at Lanesboro, Pennsylvania, 1848, which rose approximately 100 feet in height and traversed an area 1,000 feet in length. The completion of the railroad's full length from the Hudson River to Lake Erie was greeted with considerable interest on the local, state and national levels; the inaugural trip in May of 1851 was attended by President Millard Fillmore and Secretary of State Daniel Webster. Among the New York & Erie's accomplishments were the following: 1842, first railroad to ship milk to New York City; 1842, first to use a conductor bell cord to signal the engineer; 1847, first railroad to use iron rails rolled in the United States; 1850, first railroad to construct telegraph line along the right-of-way; 1851, first railroad to use telegraph for its operations; 1851, first railroad in the United States 400 miles or more in length; and 1851, first railroad to connect the Atlantic Ocean with the Great Lakes. When new interstate transit regulations were adopted in 1852, the New York & Erie Railroad connected to Jersey City, New Jersey, and in 1861 moved its terminus from Piermont to that location. As the second half of the 19th century unfolded the New York & Erie subsumed other railroad lines, including sections of line previously maintained and operated by the Buffalo & New York City Railroad Company. In 1883 the company was reorganized as the New York, Lake Erie & Western Railroad, with service extending into the Mid West. In 1895 the Erie Railroad Company was organized from the New York, Lake Erie & Western; the New York, Pennsylvania & Ohio; the Chicago & Erie, and several other smaller rail companies. Further consolidations followed in the 20th century.

If you have any questions concerning this Determination of Eligibility, please call Bill Krattinger at (518) 237-8643, ext. 3265.

TIMES HERALD-RECORD

40 Mulberry Street, Middletown, NY 10940

State of New York:

County of Orange: ss:

Patricia Foddrill

Being duly sworn deposes and says that the ORANGE COUNTY PUBLICATIONS Division of Ottaway Newspapers-Radio, Inc. is a corporation organized under the laws of the State of New York and is, at all the times hereinafter mentioned, was the printer and publisher of The Times Herald-Record, a daily newspaper distributed in the Orange, Ulster, Rockland, Dutchess, Pike, PA, Delaware and Sullivan Counties, published in the English language in the City of Middletown, County of Orange, State of New York, that deponent is the

Legal Advertising Rep.

of said The Times Herald-Record acquainted with the facts hereinafter stated, and duly authorized by said Corporation to make this affidavit; that the

Public Notice

a true printed copy of which is hereunto annexed, has been duly and regularly published in the manner required by law in said The Times Herald-Record in each of its issues published upon each of the following dates, to wit:
In its issues of

12/15/06

Signature of Representative:

Patricia Foddrill

Sworn in before me this

22

Day of

Dec.

2006

Gretchen Pina Breedy
Notary Public, Orange County

GRETCHEN PINA BREEDY
NOTARY PUBLIC FOR THE STATE
OF NEW YORK, ORANGE COUNTY
OATH / SIGNATURE IS ON FILE
COMMISSION EXPIRES 11/29/2009

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NOTICE OF INTENT TO ABANDON RAIL SERVICE

Norfolk Southern Railway Company (NSR) gives notice that on or about January 12, 2007, it intends to file with the Surface Transportation Board (STB), Washington, DC 20423, a petition for exemption under 49 U.S.C. 10903 from the prior approval requirements of 49 U.S.C. 10903 permitting NSR's abandonment of a 1.64-mile line of railroad between mileposts ZU 45.00 and ZU 46.64 in Harriman, which traverses through United States Postal Service ZIP Code 10926 in Orange County, New York. The line includes the former station of Harriman. The proceeding will be docketed as No. AB-290 (Sub. No. 283X).

The STB's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in an STB decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001 or by calling that office at 202-565-1545.

Appropriate offers of financial assistance to continue rail service can be filed with the STB. Requests for environmental conditions, public use conditions, or rail banking, trails use also can be filed with the STB. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the STB's Office of the Secretary, 1925 K Street, N.W., Washington, DC 20423-0001 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicant's representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the STB's Office of Congressional and Public Services at 202-565-1592. Copies of any comments or requests for conditions should be served on the applicants' representative: James R. Paschall, Senior General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23518-9241, (757) 629-2759.